

**CERTIFIED**

Person to Contact: [REDACTED]  
Contact Telephone Number: [REDACTED]  
In Reply Refer to: [REDACTED]  
RIN: [REDACTED]  
Tax Year: [REDACTED]

Date: JUN 11 1986

Dear Applicant:

This is a final determination as to your exempt status under Section 501(c)(3) of the Internal Revenue Code.

On February 21, 1986 we requested technical advice from our National Office on behalf of your organization. Attached is a copy of the National Office Technical Advice Memorandum which upholds our revocation letter dated July 3, 1985.

Accordingly, you are required to file Federal Income Tax returns on Form 1120.

Since this letter is being issued on the basis of National Office Technical Advice, you may not appeal this determination to the Regional or National Office of the Internal Revenue Service (see Revenue Procedure 84-46 1984-1 C.B. 541).

If you decide to contest the determination under the declaratory judgment provisions of Code Section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

[REDACTED]  
[REDACTED]  
District Director

Code	Initiator	Reviewer	Reviser	Reviser	Reviser	Reviser	Reviser
7/9/86	7/9/86	7/10/86	7/10/86				

837-A (Rev. 8-80) Correspondence Approval and Clearance

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

District Director  
[REDACTED]

Attn: Chief, EP/EO Division

Taxpayer's Name: [REDACTED]

Taxpayer's Address: [REDACTED]

Taxpayer's Identification Number: [REDACTED]

Years Involved: All

Date of Conference: March 27, 1986

Issues:

1. Whether [REDACTED] is described in section 501(c)(3) of the Internal Revenue Code.

Facts:

[REDACTED] was incorporated on [REDACTED], under the not-for-profit statutes of the State of [REDACTED]. It subsequently filed a Form 1023, Application for Recognition of Exemption, in a timely manner for purposes of section 508 of the Code.

By Certified letter dated July 3, 1985, the subject organization was denied recognition of exemption under the provisions of section 501(c)(3). The taxpayer has appealed this determination. The Appeals Office requested that the District Director, [REDACTED], seek Technical Advice.

Information submitted indicates that the applicant is a booster club, organized to raise funds to defray expenses associated with competition, for children enrolled in a for-profit gymnastics school.

Substantially all of the members of the applicant have children enrolled in the for-profit school. The Articles of Incorporation of the applicant state that one of the purposes of the organization is to support gymnasts who are related to members of the organization. Furthermore, in order for a gymnast to receive funding for competition, the parents must be in good standing as a member of the organization. Parents will not be deemed to be in "good standing" if they fail "Fair Share" fund raising requirements. The applicant has indicated that these requirements are necessary to insure that parents make every effort to support the organization. So far, only children or relatives of members have received

funding from the organization. There are no plans in existence or contemplated, to provide assistance to deserving gymnasts who do not have either parents or relatives as members in the applicant organization.

Law:

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes. No part of the net earnings of such organizations may inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholder or individuals.

Section 1.501(c) of the regulations defines a "private shareholder or individual" as a person having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for charitable purposes unless it serves a public rather than a private interest. Thus, to meet this requirement it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders or persons controlled, directly or indirectly, by such private interests.

Section 1.501-1(e)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Rev. Rul. 69-175, 1969-1 C.B. 149, provides that a non-profit organization formed to provide school bus transportation, to children attending a private school, would not be described in section 501(c)(3) of the Code. In this case, the children benefited were children of the members of the organization.

Better Business Bureau v. United States, 326 U.S. 279 (1945), held that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number of importance of statutorily exempt purposes.

Rationale:

The applicant is providing impermissible private benefits to two groups. The first is the benefit bestowed upon the for-profit gymnastic school. By providing support and travel expenses for students of the school, the organization is, in effect, funding activities of the school. In addition, by this funding, the school benefits from greater exposure and enhanced reputation. This is clearly within the prohibition concerning private benefit contained in the regulations cited above.

The second group to benefit is the parent/members of the applicant. The sole activity of the applicant is raising money to defray the costs attendant with children competing in athletic events. These costs would pay these expenses. The parents are serving their own rather than a public interest by defraying expenses associated with their childrens' athletic endeavors. In the Better Business Bureau, case cited above, the Supreme Court stated that the presence of a single non-exempt under section 501(c)(3) of the Code. In the instant case, the purpose of the applicant is to subsidize the expenses of the members' children. This would be so even if the organization supported a small number of children not related to members of the applicant. In point of fact, this organization resembles that described in Rev. Rul. 69-175.

Conclusion:

Based on the facts as described above, we conclude, the applicant is not described in section 501(c)(3) of the Code. The organization and operation of the applicant bestows an impermissible private benefit upon it's members.

CERTIFIED

Person to Contact: [REDACTED]

Telephone No.: [REDACTED]

Refer Reply to: [REDACTED]

Date: JUL 03 1985

Dear Applicant:

We have considered your application for recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code of 1954.

The information submitted discloses that you were incorporated on [REDACTED] under the nonprofit corporation laws of the State of [REDACTED].

As stated in your Articles of Incorporation your purpose is: To function as a parents' booster club and fund raising organization on behalf of young gymnasts related to the members of the organization, and all other legal powers permitted General Not for Profit Corporations.

Form 1023 and subsequent correspondence indicates the following:

- a. The gymnasts you support attend a profit making school.
- b. They pay fees for gymnastic instruction.
- c. Coaches are employed by the profit making school. You have no voice in the selection of coaches and you do not know what salaries are paid to them.
- d. The sole purpose of your existence is to provide financial assistance in the form of meet entry fees and travel expenses to competitive members.
- e. All of your members are parents of competitive team members.
- f. As stated above your Articles of Incorporation state that your purpose is to provide support to gymnasts related to members of your organization.
- g. The standing rules of your organization provide that gymnasts whose parents are not in good standing with you will not be provided entry fees or travel or lodging expenses. Parents will not be in good standing if they do not pay their dues to you and do not comply with "Fair Share" fund raising requirements.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Sumame							
Date	6/3/85	6/4/85	6/28/85	6/29/85	7/1/85		

Section 501(c)(3) of the Code provides for the exemption from Federal Income Tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inure to any private shareholder or individual.

Section 1.501(c)(3)-1 of the Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows:

"(a) Organizational and operational tests. (1) In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. (2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in Section 501(c)(3)...."

"(b) Operational test (1) Primary activities An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. (2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals..."

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in Section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either organizational or the operational test it is not exempt.

Section 1.501(c)(3)-1(e)(1) of the Income Tax Regulations provides that "an organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."



~~Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under Section 501(c)(3) to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.~~

Revenue Ruling 69-175, 1969-1 C.B. 149, provides that a non-profit organization formed by parents of pupils attending a private school that provides school bus transportation for its members' children serves a private rather than a public interest.

Your activities clearly serve the private interest of the owner of [REDACTED]. You also clearly service the private interest of your members by providing support to only your children.

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Code, since you are not organized and operated exclusively for charitable, religious, or other exempt purpose within the meaning of Section 501(c)(3).

You are required to file Federal Income Tax Returns.

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(c) of the Code.

If you do not agree with these conclusions, you may within thirty days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after you have submitted your brief to the Chicago District Office and we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 892, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

Please keep this determination letter in your permanent records.

If you agree with this determination, please sign and return the enclosed Form 6018.

Sincerely yours,

  
District Director

Enclosures:  
Publication 892  
Form 6018